

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-02-2007

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THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

W.P.Nos.32552, 36500 and 18384 of 2006

And

M.P.Nos.1,2 and 1 of 2006

Christian Medical College,
Vellore Association, rep. By its
Secretary
Vellore, Tamilnadu ... Petitioner in W.P.No.18384/2006

P.Arunkumar ... Petitioner in W.P.32552/2006

J.Jotheebun ... Petitioner in WP 36500/2006

vs.

1.The Permanent Committee for the
Conduct of Common Entrance
Examination in Private Colleges
NCB-7A, Greenways Road,
Chennai

2.The State of Tamil Nadu,
rep., by its Secretary (Health),
Fort St. George,
Chennai

3.The State of Tamil Nadu,
rep., by its Secretary (Education),
Fort St. George,
Chennai

4.The Tamil Nadu Dr.M.G.R. Medical University,
Rep., by its Registrar
40-A, Anna Salai,
Chennai-600 032 ... Respondents in W.P.No.18384/2006

1.The State of Tamil Nadu,
rep., by its Secretary to Government,
Education Department,
Fort St. George,
Chennai-9.

2.Tamil Nadu Dr.M.G.R. Medical University,
No.69, Anna Salai,
Guindy, Chennai-32,
Rep., by its Registrar.

3.Christian Medical College,
Vellore-632 002,
Rep., by its Registrar... Respondents in WP 32552/2006

1.Christian Medical College,
Vellore, represented by the
Registrar, Vellore-632 002,
Tamil Nadu.

2.Tamil Nadu Dr.MGR Medical
University, represented by the
Registrar, No.69, Anna Salai,
Guindy, Chennai-600 032,
Tamil Nadu.

3.The State of Tamil Nadu,
represented by the Secretary to Govt.,
Education Department,
Fort St. George,
Chennai-600 009. ... Respondents in WP 36500/2006

WP 18384/2006

Writ petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari, calling for the records in proceedings No.SFPC/014/MEDI/2006 dated 10.06.2006 of the Permanent Committee for the conduct of Common Entrance Test for Private Professional Educational Institutions in Tamil Nadu, the first respondent herein to the limited extent of invalidating the reservation upto 6 seats for the children of eligible Members of Staff of the Institution and quash the same to that limited extent.

WP 32552/2006

Writ petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus, directing the third respondent to admit the petitioner who is a Minority Candidate from the State of Tamil Nadu pursuant to his marks obtained in the Entrance Examination conducted by the third respondent to the M.B.B.S. Degree Course for the academic year 2006-2007.

WP 36500/2006

Writ petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus, directing the first respondent to admit the petitioner, who is a minority candidate from the State of Tamil Nadu, pursuant to his marks obtained in the entrance examination followed by interview conducted by the first respondent, to the MBBS Degree Course for the academic year 2006-2007 failing which for the academic year 2007-2008.

For petitioner
in W.P.18384/2006 and : Mr. Krisha Srinivas
Respondents 3 and 1 For M/S.S.Ramasubramaniam
in W.P.32552 and and Associates
36500/2006

For Petitioner in
W.P.32552/2006 : Mr. R.Muthukumarasamy
Senior Counsel for
Mr.K.Ravichandrababu

For Petitioner
in W.P.36500/2006 : Mr. Vineeth Subramanian
For Ms.Gladys Daniel

For Respondents 2 & 3
in W.P.18384/2006 and : Mr.M.Sekar,
Respondents No. 1 Special G.P.(Education)
in W.P.32552/06 &
Respondent No.3 in 36500/2006

COMMON ORDER

The Christian Medical College, Vellore Association, Vellore, which is a Society registered under the Societies Registration Act, 1860, hereinafter referred to as the "Petitioner Institution", floated a Prospectus inviting applications for admission to Under Graduate Medical Courses for the academic year 2006-2007. Simultaneously, the Petitioner Institution applied to the "Permanent Committee for the conduct of Common Entrance Examination in Private Professional Colleges", on 17.5.2006 seeking exemption from resorting to Common Entrance Examination conducted by the Government, but seeking permission to conduct its own Entrance Examination and follow its own admission procedure. After notice to the State Government and after hearing the parties, the Permanent Committee passed an order dated 10.6.2006, permitting the Institution to conduct its own Entrance Examination and follow its own admission procedure. However, the reservation of 6 seats made by the Institution for the children of eligible members of staff of the Institution, out of the total of 60 seats, was held by the Permanent Committee to be illegal. Aggrieved by that portion of the order of the Permanent Committee relating to reservation in favour of the children of eligible members of staff of the Institution, the Petitioner-Institution has filed a writ petition in W.P.No.18384 of 2006.

2. At the time of admission of the said writ petition on 20.6.2006, an interim stay of the impugned portion of the order of the Permanent Committee was granted, as a consequence of which, the Petitioner-Institution completed the admission process and published the results of the Selection Process on 27.7.2006. The selected candidates also joined the Courses on 28.7.2006.

3. One unselected candidate by name P.Arunkumar made a representation to the Government as well as to the Permanent Committee on 28.7.2006, challenging his non-selection on the ground that the admission procedure was flawed. Under directions from the Permanent Committee, the Institution sent a reply dated 17.8.2006 justifying the non-selection of the said candidate P.Arunkumar. Thereafter, the said candidate P.Arunkumar filed a writ petition in W.P.No.32552 of 2006, seeking a Writ of Mandamus, directing the Petitioner-Institution to admit him on the basis of the marks secured by him in the Entrance Examination.

4. Another unselected candidate by name J. Jotheebun has filed a writ petition in W.P.No.36500 of 2006, seeking a Writ of Mandamus to direct the Petitioner-Institution to admit him on the basis of the marks secured by him in the Entrance Examination followed by the interview.

5. Since all the writ petitions raise common questions as to whether the admission procedure adopted by the Petitioner-Institution is fair and proper and whether reservation of seats in favour of children of staff members is permissible, all these writ petitions were taken up together for disposal.

6. I have heard Mr.Krishna Srinivas, learned counsel appearing for the Petitioner-Institution, Mr.R.Muthukumarasamy, learned Senior Counsel appearing for one unselected candidate, who is the petitioner in W.P.No.32552 of 2006, Mr.Vineeth Subramanian, learned counsel appearing for the other unselected candidate, who is the petitioner in W.P.No.36500 of 2006 and Mr.M.Sekar, learned Special Government Pleader (Education) appearing for the Government of Tamil Nadu.

7. Before delving deep into the rival contentions, it is necessary to have a look at the admission procedure adopted by the Institution so that the factual matrix around which the contentions are raised can be well appreciated.

8. The procedure for selection of candidates to Under Graduate Medical Courses is narrated in the Prospectus (for the year 2006-2007), on the following lines:-

"BASIS OF ADMISSION

1. Selection will be based on merit. A written test (see Annexure II of bulletin) and interview will assess the candidate's ability to undertake medical studies. The tests and interview will also assess the candidate's character, motivation and suitability for the medical profession and studies at the Christian Medical College, Vellore.

2. The number of candidates for the MBBS course shall be 60 per year, of which not less than 25 shall be women.

3. The final distribution of seats will be as follows:

Open All India Merit 10
Christian Minority upto 50

4. Open All India Merit: (Total 10)

(i) One candidate will be selected by the Government of India (separate request for obtaining prescribed applications are to be addressed to the authorities as indicated in Annexure-I of the bulletin).

(ii) Twenty percent (2 seats) of the open competition seats shall be reserved for candidates belonging to Scheduled Castes/Tribes (SC/ST). The candidates belonging to SC/ST should indicate this on the application form and a photocopy of the certificate of proof issued by the Dy. Tahsildar or the District Magistrate MUST be enclosed. The original of the Certificate is required at the time of interview.

(iii) The rest shall be on open merit.

5. Minority Candidates (upto 50)

a. Up to 10 seats will be reserved for Christian candidates from socially (health parameters) and educationally backward States who are domiciled in the state and have undergone three of the last four years of their secondary education in that state. The states, which come under this category, will be determined from time to time based on the health and development indices published by the Government of India. For this year's selection, the states shall be - Bihar, Chattisgarh, Jharkhand, MP, Orissa, UP and the North-eastern states. Candidates will be selected by merit.

b. The remaining seats will be available for Christian students on merit from all over India.

c. Students will have to produce a certificate from their Pastor, counter-signed by a designated administrative authority/authorities of their church or by the designated authorities of their Christian organization, who have applied for recognition with the C.M.C., Vellore. All churches or Christian organizations that desire to certify their children for this privilege should apply to the Office

of the Council Secretary of C.M.C to be recognised for certifying the candidates. The following may be eligible for such recognition from C.M.C. Vellore.

- i. All existing member churches and organizations of the C.M.C. Vellore Council,
- ii. Churches that are members of the National Council of Churches in India or
- iii. Any other Christian Church/Christian organization that is registered with the Government.

6. There is no reservation for NRI's; they will be considered under All India Open Merit. However, up to 6 seats will be reserved for admission of children of eligible members of staff of CMC Vellore (Confirmed staff with 10 years of continuous service or retired or died in service after 10 years of continuous service). These seats will be available on merit for children of both minority and non-minority staff.

7. A written test in Bible Knowledge should be taken by all Christian Minority students, if they are called for interview and practical tests at Vellore.

8. About twice the number of students to be admitted will be interviewed and have practical tests at Vellore.

9. All admissions are subject to medical fitness.

10. THE DECISION OF THE SELECTION COMMITTEE IS FINAL."

9. The admission procedure adopted by the petitioner-Institution, in the light of the above Prospectus conditions, is assailed by the unselected candidates in 2 writ petitions and the disapproval of the reservation of seats for children of the staff of the Institution, by the Permanent Committee, is the subject matter of the writ petition filed by the petitioner-Institution. The questions raised in these three writ petitions revolve around the following crucial issues:-

(a) The Institution conducts (i) a Common Written Entrance Examination to which 40% of the marks are allotted, (ii) certain tests termed as "Group Tasks" for which 20% of the total marks are allotted and (iii) an interview for which 40% of the total marks are allotted. In respect of Christian students, the marks allotted for interview are reduced to 30% of the total marks and they are made to write a Written Test in Bible knowledge, to which 10% of the total marks are allotted. Therefore, the first

issue raised by the unselected candidates is as to whether an Institution is entitled to allot 40% of the total marks for interview, in the light of various decisions of the Supreme Court fixing a ceiling limit of 15% of marks for interview.

(b) Even the allotment of marks in the Written Examination, Group Tasks and Interview, are not done in a straight, plain and simple Manner. The marks are converted at every stage into a system known as "Stanine Grading" and the selection of candidates finally depends upon the grade obtained by them, in the final tally, which according to the unselected candidates failed the test of transparency in the matter of selection.

(c) As a minority educational Institution claiming protection under Article 30 of the Constitution, the Institution was obligated to admit a predominant number of students belonging to the State of Tamilnadu, though a Sprinkling of such students from other States could also be admitted. On the contrary, the Institution actually admitted only 5 candidates belonging to the Christian minority community from the State of Tamilnadu, thereby failing the test of "State as the unit" for determining the minority status of the Institution.

(d) The reservation of 10 seats made by the Institution for Christian candidates from socially and economically backward States, included within its ambit, candidates from the North Eastern States. Two of the North Eastern States have Christians as the majority population and hence according to the unselected candidates, the selection of Christian students from States in which they form a majority, defeated the purpose of grant of minority status and also violated the law laid down by the Supreme Court.

(e) The question whether the reservation upto six seats for the children of eligible members of the staff of the Institution falls within the frame work of reasonable classification permitted by the Constitution is the last issue raised by the unselected candidates and the same has also been found against the Institution by the Permanent Committee.

Now let us take up these issues one after the other.

I. The validity of allotment of 40% marks for Interview:-

10. Mr.R.Muthukumarasamy, learned Senior Counsel appearing for one of the unselected candidates, lucidly traced the history of the law on the point as to whether the marks allotted for interview shall exceed a particular percentage. The earliest case on this point was R.Chitraleka vs. State of Mysore (AIR 1964 SC 1823) and the same was followed by A.Periyakaruppan vs. The State of Tamil Nadu (1971 (1) SCC 38). In the said case, the Supreme Court held that "earmarking 75 marks out of 275 marks for interview as interview marks prima facie appears to be excessive". Though the Supreme Court did not accept the submission that the system of interview as is vogue in this Country is so defective as to make it useless, the Supreme Court nevertheless found that even when interviews are conducted by impartial and competent persons on scientific lines, very many uncertain factors like the initial nervousness on the part of some candidates, the mood in which the interviewer happens to be and the odd question that may be put to the persons interviewed, might all go to affect the result of the interview.

11. The next case on the point was that of Ajay Hasia vs. Khalid Mujib Sehravardi ((1981) 1 SCC 722). In paragraph-18 of the said judgment, the Supreme Court upheld the adoption of oral interview as a supplementary test for assessing the suitability of candidates wherever test of personal traits is considered essential, though the Apex Court held at the same breath that it is undoubtedly not a very satisfactory test for assessing and evaluating the capacity and calibre of candidates. In paragraph-19 of the said judgment, the Supreme Court held that allocation of 33 and 1/3% of the total marks for oral interview was plainly arbitrary and unreasonable. The following portions of paragraph-19 of the said judgment are of significance in this regard:-

"Now there can be no doubt that, having regard to the drawbacks and deficiencies in the oral interview test and the conditions prevailing in the country, particularly when there is deterioration in moral values and corruption and nepotism are very much on the increase, allocation of a high percentage of marks for the oral interview as compared to the marks allocated for the written test, cannot be accepted by the Court as free from the vice of arbitrariness."

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"There can be no doubt that allocating 33 1/3 per cent of the total marks for oral interview is plainly arbitrary and unreasonable. It is significant to note that even for selection of candidates for the Indian Administrative Service, the Indian Foreign Service and the

Indian Police Service, where the personality of the candidate and his personal characteristics and traits are extremely relevant for the purpose of selection, the marks allocated for oral interview are 250 as against 1800 marks for the written examination, constituting only 12.2 per cent of the total marks taken into consideration for the purpose of making the selection. We must, therefore, regard the allocation of as high a percentage as 33 1/3 of the total marks for the oral interview as infecting the admission procedure with the vice of arbitrariness and selection of candidates made on the basis of such admission procedure cannot be sustained."

In the last portion of paragraph-19 of the same judgment, the Supreme Court held that "under the existing circumstances, allocation of more than 15 per cent of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid".

12. In the next case, Ms.Nishi Megh and Others vs. State of J & K (1980 (4) SCC 95) , the Supreme Court again doubted the reliability of the interview system, but held that the contention that it is not a reliable test reflects a legitimate point of view, but it is only a point of view and cannot be taken as the last word on the subject. However, the Supreme Court proceeded to hold that reserving 50 marks for interview out of a total of 150 marks did seem excessive, especially in the background of the fact that the time spent by the Interviewing Committee was not more than four minutes on each candidate.

13. The prescription of 25% marks for oral interview for selection to judicial service came up for consideration in Lila Dhar vs. State of Rajasthan (1981 (4) SCC 159). After taking into consideration the law laid down in Periyakaruppan's case and Ajai Hasia's case, the Supreme Court made a distinction between selection for appointment to services and selection for admission to Colleges, in paragraph-6 of its judgment as follows:-

"6. Thus, the written examination assesses the man's intellect and the interview tests the man himself and "the twain shall meet" for a proper selection. If both written examination and interview test are to be essential features of proper selection, the question may arise as to the weight to be attached respectively to them. In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview-test must be minimal. That was what was decided by this Court in Periyakaruppan vs. State of Tamil Nadu, Ajay Hasia vs.

Khalid Mujib Sehrawardi, and other cases. On the other hand, in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied."

14. In *St. Stephen College vs. University of Delhi* ((1992) 1 SCC 558), the Supreme Court considered the above noted earlier decisions of the Supreme Court and held in paragraph-63 as follows:-

"63. The oral interview as a supplementary test and not as exclusive test for assessing the suitability of candidates for college admission has been recognised by this Court. But at the same time, to avoid arbitrariness in the selection it has been repeatedly held that there shall not be allocation of high percentage of marks for oral interview test. Where candidate's personality is yet to develop, it has been emphasised that greater weight has to be given to performance in the written examination and the importance to be attached to the interview test must be minimal. The Court has generally indicated that interview marks should not be more than 15 per cent of the total marks."

15. All the aforesaid decisions, except the one in *St. Stephen's* case, did not deal with the issue of allotment of more percentage of marks for the interview, with particular reference to the right of the minority Institutions to admit students of their own choice. *St. Stephen's* case considered the issue in the light of the right of minority institutions. The subsequent decisions laid emphasis on the freedom of choice of the self financing as well as minority Institutions. In *T.M.A. Pai Foundation vs. State of Karnataka* (2002 (8) SCC 481), the Supreme Court answered the question as to whether the rights of minorities to establish and administer educational Institutions of their choice will include the procedure and method of admission and selection of students, under question No.5(A) under para-161, as follows:-

"A. A minority Institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not tantamount to maladministration. Even an unaided minority Institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the Institution will fail to achieve excellence."

16. In Islamic Academy of Education vs. State of Karnataka (2003 (6) SCC 697), the Five Judge Bench of the Supreme Court, constituted for the purpose of clarifying any doubt/anomaly in the larger Bench Judgment in T.M.A. Pai's case, again addressed itself to the question about the right of unaided professional colleges to evolve their own method of admission. In para-16 of the said judgment, the Supreme Court held that the managements of these colleges could select the students, either on the basis of the Common Entrance Examination conducted by the State or on the basis of a Common Entrance Test to be conducted by an Association of all Colleges of a particular type in that State. The option of choosing between either of these tests must be exercised before issuing the Prospectus.

17. After holding that the minority Institutions can admit students on the basis of either of the above two Common Entrance Tests, it was brought to the notice of the Supreme Court that a few Institutions like the petitioner-Institution, have had their own admission procedure for a fairly long period of time and that no complaints had ever been made about the fairness or transparency of such a procedure. Dealing with the said submission, the Supreme Court held in para-17 as follows:-

"17. At this juncture it is brought to our notice that several Institutions, have since long, had their own admission procedure and that even though they have been admitting only students of their own community, no finger has ever been raised against them and no complaints have been made regarding fairness or transparency of the admission procedure adopted by them. These Institutions submit that they have special features and that they stand on a different footing from other minority non-aided professional Institutions. It is submitted that their cases are not based only on the right flowing from Article 30(1) but in addition they have some special features which require that they be permitted to admit in the manner they have been doing for all these years. A reference is made to few such Institutions i.e. Christian Medical College, Vellore, St. John's Hospital, Islamic Academy of Education etc. The claim of these Institutions was disputed. However, we do not think it necessary to go into those questions. We leave it open to the Institutions which have been established and who have had their own admission procedure for, at least, the last 25 years to apply to the Committee set out hereinafter."

18. It is in pursuance of the aforesaid direction of the Supreme Court in Islamic Academy's case that the petitioner-Institution applied to the Permanent Committee for approval of their admission procedure and the Permanent Committee also granted approval for the admission procedure by its order dated 10.6.2006, though the Permanent Committee interfered with the admission to the limited extent of setting aside the quota reserved for children of eligible staff members. Thus it is clear that the admission procedure adopted by the Institution is not beyond the pale of judicial review, since the Supreme Court directed the petitioner Institution and other similar Institutions to go before the Permanent Committee for approval of the admission procedure.

19. In the last case in this series viz., P.A. Inamdar vs. State of Maharashtra (2005 (6) SCC 537), the Supreme Court dealt with this issue in para-133 as follows:-

"133. So far as the minority unaided Institutions are concerned, to admit students being one of the components of "the right to establish and administer an Institution", the State cannot interfere therewith. Up to the level of undergraduate education, the minority unaided educational Institutions enjoy total freedom."

20. After having held so in para-133, the Supreme Court held in para-137 of the same judgment as follows:-

"Pai Foundation has held that minority unaided Institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefor subject to its being fair, transparent and non-exploitative."

21. Thus it could be seen that the maximum percentage of marks prescribed for interview as part of the admission procedure for selection, as held in St. Stephen's case, was not directly tested by the Apex Court in any of the subsequent judgments, relating to minority rights, even though they permitted the Institutions to enjoy a freedom, limited only by the *triple tests of fairness, transparency and non-exploitative nature*.

22. Therefore, keeping in mind, the law laid down by the Supreme Court right from Chitralekha's case, it is to be seen whether the allotment of 40% marks for interview in the present case, violates the law laid down by the Supreme Court.

23. Mr. Krishna Srinivas, learned counsel appearing for the petitioner-Institution, contended that despite the prescription of a cap for the marks allotted for interview, the Supreme Court did not set aside the selection even in St. Stephen's Case, and that as a matter of fact, the entire selection in St. Stephen's Case, was made on the basis of viva voce and that it was approved

by the Supreme Court.

24. It is true that the selection was not set aside in St. Stephen's Case. But the Supreme Court explained the rationale for not setting aside the selection, in para-62 of the judgment, in the following words:-

"We have carefully examined the College Admission Programme and in our opinion, the contention urged for the University and Students' Union is misconceived. The purpose of the interview is not to reassess or remeasure the merits of the applicants in the qualifying examinations. The marks secured in the qualifying examinations are indeed relevant for selection and the interview is only supplementary test. The College fixes different cut-off percentage of marks in different subjects. The candidates are called for interview in the ratio of 1:4 or 1:5 depending upon the candidate's choice of selection of courses of study. The interview is conducted by men of high integrity, calibre and qualification. They are men who deal with education and the students. During the interview, questions are asked to test the candidate's knowledge of the subject and his general awareness of the current problems. The student is also required to furnish in the application form his interest, hobbies, values, career plan etc. Each member of the Interview Committee grades the performance of the candidates and the selection is made for each course of study by taking into consideration the opinion expressed by all the members of the Interview Committee. By consensus the final list of candidates is prepared. The selection is thus made on the basis of the candidate's academic record and performance at the interview keeping in mind his/her all round competence, capacity to benefit from being in the College as well as potential to contribute to the life of College. Judging the performance by grading is a well known method followed in the academic field."

25. What follows from the above observations of the Supreme Court in St. Stephen's case (which was not upset in the subsequent decisions at least on this aspect) is that in spite of the marks allotted for interview being in excess of 15% or 25%, if the Institution still establishes that the admission procedure adopted by it was fair, transparent and non-exploitative, it could still avoid interference by this Court. This conclusion is inevitable on account of the following reasons:-

(a) The cap of 15% fixed for interview is only to ensure that the admission procedure passes the triple tests of fairness, transparency and non-exploitative nature. It is only a means to

achieve the end result and hence the Institution can always prove that interview was not intended to distort merit. This is why, the Supreme Court approved the selection process in St. Stephen's case.

(b) St. Stephen's case was approved by the larger Bench in T.M.A. Pai Foundation case on this aspect (though not on the issue of fixation of a ceiling of 50% on reservations for admission of minority students).

26. Therefore, I am of the considered view that the allotment of 40% of the total marks for interview in the selection process adopted by the petitioner-Institution, cannot be blindly held to be vitiated, and the test to determine the validity of the same is whether the provision of 40% marks for Interview actually distorted the results of the Written Entrance Examination and the marks secured in the Qualifying Examination.

27. To see if there was distortion of the results of the Written Examination and the results of the Qualifying Examination, on account of allotment of 40% marks for Interview, it is necessary to look at the admission procedure adopted by the Institution. According to the Institution, the process of admission is based on determining academic merit, by an All India Entrance Test, followed by a process of Test and Interview, including objective Tasks (Group Tasks and Individual Tasks). The Written Test covers five papers, one each on Biology, Physics, Chemistry, General Ability and Speed and Accuracy. Persons who had scored above 96 percentile are awarded Grade-A, persons who had scored above 89 percentile but below 96 are awarded Grade-B+, persons who had scored above 77 percentile are awarded Grade-B and those who had scored above 60 percentile are awarded Grade-C+. Those who had scored above 40 percentile are awarded Grade-C and those who scored between 23 to 40 percentile and between 11 to 23 percentile are awarded Grades C- and D and so on. Thus, the entire group of students who participate in the admission procedure, are divided into Nine Bands, based on the normalisation of the mark curve known as STANINE (Standard Nine System). This Stanine Grade is given for each of the five subjects, with the Grades A, B+, B, C+, C, C-, D, F and U, being converted into numerical scores of 1,2,3,4,5,6,7,8 and 9. Thereafter the numerical scores in all the five papers are totalled and again converted into a Final Grade called Final Composite Grade or Preliminary Test Average (PTA).

28. According to the rank obtained by candidates in the All India Entrance Test, on the basis of Preliminary Test Average (PTA) narrated above, twice the number of candidates to be finally admitted, are called for a Three Day Interview. The candidates selected for Interview are formed into groups of nine or ten and each group is assigned to two staff members known as "Group Observers". These Observers stay with the group for a two day period and indicate their opinion on the suitability of each candidate, based on observations and interviews. On the first day, the candidates are given an idea of the Interview Programme and subjected to complete physical check up. In following two days, each

candidate participates in four specific tasks, two of which are group based and two individual. The tests are administered by senior staff members known as "Test Observers". While group tasks are said to have been planned for about half an hour, for determining the qualities of leadership, accommodativeness, initiative, industriousness and team spirit, the individual tasks are scheduled for about three to six minutes per candidate for determining skill, patience, neatness, originality, sensible thinking, intelligence and accuracy. The Group Observers and Task Observers write detailed reports and assign grading to the candidates.

29. After the conclusion of the interview, the Selection Board has four alphabetical grades with corresponding numeric scores for each candidate. They are (1) All India Entrance Test Grade (PTA), (2) Bible Knowledge, (3) Task Grade and (4) Interview Grade. The numeric score of the alphabetic grade is given the weightage of 0.4 for PTA, 0.1 for Bible Knowledge, 0.2 for Task Grade and 0.3 for Interview Grade. The numeric score is multiplied by the weightage and all the four grades are added to arrive at the total numerical scores and total alphabetic grade. Those who secure a total numeric score of 1.49 or less get the final alphabetic grade of 'A', those who secure a total numeric score of 1.5 get the final alphabetic grade of 'A/B+', those who secure a total numeric score of 1.51 to 2.49 get the final alphabetic grade of 'B+', those who secure a total numeric score of 2.50 get the final alphabetic grade of 'B+/B', those who secure a total numeric score of 2.51 to 3.49 get the final alphabetic grade of 'B' and those who secure a total numeric score of 3.50 get the final alphabetic grade of 'B/C+' and those who secure a total numeric score of 3.51 to 4.49 get the final alphabetic grade of 'C+'. Those who secure a total final alphabetic score of C+ and higher alone, are eligible for consideration for selection and the candidates are ranked in the order of merit for the purpose of determining the final list of candidates selected for admission.

30. At the outset, the above Selection Procedure appears to be both complicated as well as confusing. Should an Institution follow such a complicated and long winding procedure, especially for selection of students in the age group of 17 - 19, when it is doubtful whether even elders could understand this procedure? What is the justification for the Institution to adopt such a procedure, which is mind boggling and tiring for even a well trained and disciplined mind even for the purpose of understanding?

31. In a paper presented by Mr.P.S.S.S.Rao, Department of Bio-Statistics, Christian Medical College and Hospital, with the title "Evaluation of Selection Procedures in relation to performances in the Under Graduate Medical Courses", published in the British Journal of Medical Education Volume 5, No.3 Pages 193 to 198, September, 1971, the Institution has furnished the justification for such a complicated procedure, which is only within the reach of a mathematically trained mind. In the said paper, the statistics of persons admitted to the Under Graduate Medical Courses from the year 1947, the number of dropouts in each batch, number of students who failed in various examinations, leading to additional time taken for completion of course etc., were analysed and the

problems, conclusions and findings are given as follows:-

"One major problem in interpretation from studies confine only to those who have been admitted into medical schools concerns the elimination of those not admitted because of poor performance in the admission tests. Whether such applicants would have performed well during the medical course is only a matter of conjecture. In any decision-making process some value judgment is necessary and the setting of a minimum entrance score reflects either an implicit or explicit value system (Hunka, Gilbert, and Cameron, 1966). The selection procedure adopted at Vellore utilizes the objective-type entrance tests as well as a thorough and deliberate interview procedure. The findings indicate that the selection procedures adopted by the Christian Medical College, Vellore, have resulted in a low wastage and stagnation during the medical course. An analysis of the performance of students admitted during the years 1942 to 1946 before the utilization of the two-stage selection procedure shows that 13.2% of those admitted discontinued their medical studies and that nearly 14% took an additional two years or more to complete the course. The drop-out rate in United States medical schools is quoted as 9% of admissions; attrition rates rose from a low of less than 7% for students admitted in 1950 to an estimated high of about 11% for those who entered medical school in 1961 (Johnson and Hutchins, 1966). Vellore's low drop-out rate of only 4% as well as the fact that nearly two-thirds complete the course with no more than an additional half a year indicates the effectiveness of the two-stage screening procedure in choosing apt students. On the other hand nearly 10% of the students have taken an additional two years or more to complete the course. This had no relation to the preliminary test average or to the group observers' grades. Attention to the responsibility of the training Institution in further motivating the student to complete the course (Goughetal., 1963) with minimum loss of time should probably help to reduce this percentage. Further analysis based on the phases during the course at which there was maximum loss will be presented and discussed in a later paper.

Summary

The selection procedures as used at the Christian Medical College, Vellore, S. India, are described and the selection performances are correlated with the wastage and stagnation

during the medical course. The analysis is based on 764 students who were admitted during 1947 to 1962.

The selection procedures consist of, firstly, an entrance test in various subjects, the questionnaires being formulated as multiple-choice objective type; secondly, an intensive three-day interview programme; and, thirdly, a meeting of the selection board to review all the available material for each candidate and grade each applicant.

The study reveals that only 4% have dropped out of the course, only one-fourth of these due to poor performance or because of their interest in other fields.

Thirty-two per cent have completed the course with no loss of time and an additional 21% taking no more than half a year. Significant correlations are observed between each of the three-selection procedures and the total performance during the course. At the same time about 10% seem to take more than two years to complete the course. These show no correlation with the selection grades."

32. Therefore, I am convinced that the allotment of 40% marks for interview by the Institution, is not unfair, on the facts of the case, since the Institution has been adopting the same procedure and same allotment of marks for written examination as well as interview for several decades. To put it differently, I am satisfied that the Institution has not been adopting this practice of allotment of 40% marks for the purpose of distorting the results of the qualifying examination and the main written entrance examination. As a matter of fact, the Institution furnished a chart containing details of the marks secured by the candidates in the entrance examination, marks secured in Group Tasks, marks secured in Bible Test and marks secured in Oral Interview and the conversion of those marks into Grades. From the chart, I find that the variation in the ultimate result, on account of allotment of 40% marks for interview, is very negligible. Such a negligible variation did not amount to distortion of the results. As a matter of fact, the allotment of a mere 15% marks for interview, would also have resulted in a negligible variation in the results. Therefore, on the first issue, I do not find any illegality or irregularity, in the allotment of 40% marks for interview in the Selection Process carried out by the Institution.

33. In *Mridul Dhar vs. Union of India* (2005 (2) SCC 65), the Supreme Court issued certain directions in para-35, one of which was as follows:-

"13. For granting admission, the merit determined by competitive examination shall not be tinkered with by making a provision like grant of marks by mode of interview or any other mode".

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However, the said directions were made in the case arising out of non-adherence to time schedule by the States, leaving the

candidates coming under the All India Quota, in the lurch. The said judgment did not deal with the above issue, in the light of the right of the minority Institutions. Hence, the same cannot be taken to be applicable to Institutions like the petitioner, who have been permitted by the Supreme Court itself to have its own admission procedure and get it approved by the Permanent Committee.

34. The petitioner-Institution went before the Permanent Committee, which approved the entire admission procedure including the allotment of 40% marks for the interview. I have also independently considered this issue in the light of various decisions of the Supreme Court extracted supra, as well as the records produced and I am convinced that the allotment of 40% marks for the interview by the petitioner-Institution is not with a view to and did not actually, tinker with the merits of the candidates.

II. CONVERSION OF MARKS INTO A GRADING SYSTEM OFFENDING THE TEST OF TRANSPARENCY:

35. As stated in paragraphs 27, 28 and 29 above, the Institution has adopted a unique procedure of converting the marks at every stage into a system of grading called Stanine Grading. The process of admission is based on determining academic merit, by an All India Entrance Test, followed by a process of Test and Interview, including objective Tasks (Group Tasks and Individual Tasks).

36. The above procedure according to the unselected candidates, is complicated, ununderstandable and hence lacks transparency. But I am of the considered view that all that is difficult to understand, cannot be termed as non-transparent. The benefits of adopting the Stanine procedure had been furnished by the Department of Bio-Statistics of the Institution, 36 years ago, in a paper published in the British Journal of Medical Education in September, 1971, a portion of which is extracted above. The practise of selecting students on the basis of an Entrance Examination and interview was introduced long ago by the Petitioner Institution, even before it was conceived by others. As a matter of fact, the petitioner Institution claims to be the first ever college in the country to have adopted a system of holding an entrance examination and interview for selection of students for admission, right from the year 1948. The Grading System has not been invented by the Institution, in the recent past, to bye-pass merit. They have been using this grading system for several decades (more than 50 years). It has been evolved by Specialists in the field and hence it cannot be very lightly set at naught. What a court should and should not do in such cases is well spelt out by Justice V.R.Krishna Iyer in Dr.Jagadish Saran -vs- Union of India (1980) 2 SCC 768 in the following words:-

"Judges should not rush in where Specialists fear to tread. To doubt is not enough to demolish". Therefore I am unable to accept the contention that the selection process lacks transparency.

III. ISSUE OF PREDOMINANT NUMBER OF STUDENTS FROM TAMILNADU AND A SPRINKLING FROM OTHER STATES:-

37. Mr. R. Muthukumarasamy, learned Senior Counsel and Mr. Vineeth Subramanian, learned counsel appearing for the unselected candidates, contended that an Institution claiming protection on the ground of being a minority Institution, should necessarily cater primarily to the needs of the students of the minority Community of the particular State in which the Institution is located. According to them, the law permits only a "sprinkling" of seats to be filled up by candidates belonging to the minority Community of other States, while "preponderance of seats" have to be filled up by students of the minority Community of the State. The said contention of the learned counsel stems from the law laid down by the Apex Court that State is the Unit for determining the minority status of a Community, whether it be linguistic or religious minority. In order to appreciate the reach of the said contention, it is necessary to analyse the various decisions of the Supreme Court on the point.

38. In paragraphs-73 to 81 of its judgment in T.M.A.Pai Foundation case, the Eleven Judges Bench of the Supreme Court considered the question as to what would be the unit - the State or the Country as a whole, for determining the existence of a religious or linguistic minority in relation to Article 30 of the Constitution. Paragraphs-75 and 76 of the said judgment read as follows:-

"75. Article 30(1) deals with religious minorities and linguistic minorities. The opening words of Article 30 (1) make it clear that religious and linguistic minorities have been put on a par, in so far as that Article is concerned. Therefore, whatever the unit - whether a State or the whole of India - for determining a linguistic minority, it would be the same in relation to a religious minority. India is divided into different linguistic States. The States have been carved out on the basis of the language of the majority of persons of that region. For example, Andhra Pradesh was established on the basis of the language of that region viz., Telugu. "Linguistic minority" can, therefore, logically only be in relation to a particular State. If the determination of "linguistic minority" for the purpose of Article 30 is to be in relation to the whole of India, then within the State of Andhra Pradesh, Telugu speakers will have to be regarded as a "linguistic minority". This will clearly be contrary to the concept of linguistic States.

76. If, therefore, the State has to be regarded as the unit for determining "linguistic minority" vis-a-vis Article 30, then with "religious minority" being on the same footing,

it is the State in relation to which the majority or minority status will have to be determined."

39. Again in para-167 of the said judgment, which was actually a separate but concurring judgment of Justice V.N.Khare, the Supreme Court discussed the issue as follows:-

"167. But the question arises, what is the test to determine minority status based on religion or language, of a group of persons residing in a State or Union Territory? Whether minority status of a given group of persons has to be determined in relation to the population of the whole of India or population of the State where the said group of persons is residing. When the Constitution of India was being framed it was decided that India would be a union of States and the Constitution to be adopted would be of federal character. India is a country where many ethnic or religious and multi language people reside. Shri K.M.Munshi, one of the Members of the Constituent Assembly in his note and draft article on right to religion and cultural freedom referred to minorities as national minorities. The said Draft Article VI(3) runs as under:

"(3) Citizens belonging to national minorities in a State whether based on religion or language have equal rights with other citizens in forming, controlling and administering at their own expense, charitable, religious and social Institutions, schools and other educational establishments with the free use of their language and practice of their religions".

40. Despite holding so, the Supreme Court did not consider it necessary to answer question No.6(b) under para-161 of the judgment in T.M.A.Pai Foundation case. Question No.6(b) was "whether it would be correct to say that only the members of that minority residing in State 'A' will be treated as the members of the minority vis-a-vis such Institution?". The answer of the Supreme Court was that the said question need not be answered by that Bench and that it could be dealt with by a regular Bench.

41. In P.A.Inamdar case, which took up the questions which remained unsettled even after the decision in Islamic Academy case, (which itself was taken up for clarifying T.M.A.Pai Foundation case) it was held in paras-95, 101 and 102 as follows:-

"95. The term "minority" is not defined in the Constitution. Chief Justice Kirpal, speaking for the majority in Pai Foundation took a clue from the provisions of the States Reorganisation Act and held that in view of India having been divided into different

linguistic States, carved out on the basis of the language of the majority of persons of that region, it is the State, and not the whole of India, that shall have to be taken as the unit for determining a linguistic minority vis-a-vis Article 30. In as much as Article 30(1) places on par religions and languages, he held that the minority status, whether by reference to language or by reference to religion, shall have to be determined by treating the State as a unit. The principle would remain the same whether it is a Central legislation or a State legislation dealing with a linguistic or religious minority. Khare, J. (as His Lordship then was), Quadri, J. and Variava and Bhan, JJ. in their separate concurring opinions agreed with Kirpal, C.J. According to Khare, J., take the population of any State as a unit, find out its demography and calculate if the persons speaking a particular language or following a particular religion are less than 50% of the population, then give them the status of linguistic or religious minority. The population of the entire country is irrelevant for the purpose of determining such status. Quadri, J., opined that the word "minority" literally means "a non-dominant" group. Ruma Pal, J. defined the word "minority" to mean "numerically less". However, she refused to take the State as a unit for the purpose of determining minority status as, in her opinion, the question of minority status must be determined with reference to the country as a whole. She assigned reasons for the purpose. Needless to say, her opinion is a lone voice. Thus, with the dictum of Pai Foundation it cannot be doubted that a minority, whether linguistic or religious, is determinable only by reference to the demography of a State and not by taking into consideration the population of the country as a whole."

"101. In this background arises the complex question of transborder operation of Article 30 (1) . Pai Foundation has clearly ruled in favour of the State (or a province) being the unit for the purpose of deciding minority. By this declaration of law, certain consequences follow. First, every community in India becomes a minority because in one or the other State of the country it will be in minority - linguistic or religious. What would happen if a minority belonging to a particular State establishes an educational

Institution in that State and administers it but for the benefit of members belonging to that minority domiciled in the neighbouring State where that community is in majority? Would it not be a fraud on the Constitution? In St. Stephen's Their Lordships had ruled that Article 30(1) is a protective measure only for the benefit of religious and linguistic minorities and "no ill-fit or camouflaged Institution should get away with the constitutional protection" (SCC p.587, para 28). The question need not detain us for long as it stands answered in no uncertain terms in Pai Foundation. Emphasising the need for preserving its minority character so as to enjoy the privilege of protection under Article 30(1), it is necessary that the objective of establishing the Institution was not defeated.

"If so, such an Institution is under

.. .. .
.. .. .

Article 30(1) (extract from para 153 of Pai Foundation case). The same principle applies to religious minority. If any other view was to be taken, the very objective of conferring the preferential right of admission by harmoniously constructing Articles 30(1) and 29(2), may be distorted."

"102. It necessarily follows from the law laid down in Pai Foundation that to establish a minority Institution the Institution must primarily cater to the requirements of that minority of that State else its character of minority Institution is lost. However, to borrow the words of Chief Justice S.R.Das in Kerala Education Bill a "sprinkling" of that minority from the other State on the same footing as a sprinkling of non-minority students, would be permissible and would not deprive the Institution of its essential character of being a minority Institution determined by reference to that State as a unit."

42. Reiterating that State shall be the unit for determining the minority status of an educational Institution, the Supreme Court summarised the position in law, as follows in para-135 of the judgment in Inamdar's case:-

"135. Pai Foundation has already held that the minority status of the educational Institutions is to be determined by treating the States as units. Students of that Community residing in other States where they are not in minority, shall not be considered

to be minority in that particular State and hence their admission would be at par with other non-minority students of that State. Such admissions will be only to a limited extent that is like a "sprinkling" of such admissions, the term we have used earlier borrowing from Kerala Education Bill, 1957. In minority educational Institutions, aided or unaided, admissions shall be at the State level. Transparency and merit shall have to be assured."

43. Thus it is clear that the Supreme Court has consistently held that State is the unit for determining the minority status of an Institution, whether it be a religious minority or a linguistic minority. Therefore it is the contention of the learned counsel appearing for the unsuccessful candidates that the petitioner-Institution ought to have admitted students of the Christian Minority Community of the State of Tamil Nadu predominantly, though a sprinkling of seats could have been filled up by students of the Christian Minority Community from other States.

44. As seen from its Prospectus, the petitioner-Institution had allotted 10 seats to be filled up under the Open All India Merit Category, 10 seats to be filled up from Christian students from socially and educationally Backward States, 6 seats for the children of eligible members of the staff of the Institution and 34 seats to be filled up by Christian students on merit from all over India. As a result of such distribution of seats, only 5 seats out of the total of 60 seats got filled up by students of Christian Minority Community belonging to the State of Tamil Nadu (apart from 5 students admitted under the category of children of the staff members). As a matter of fact, out of 162 candidates short listed in the entrance examination, for interview, only 12 candidates were from Tamil Nadu. Out of this 12 candidates, 3 candidates did not attend the interview. Out of the remaining 9 candidates who attended the interview, only 5 candidates got selected and 4 did not get selected. Thus in essence, apart from 5 students selected under the quota of 6 seats reserved for children of eligible staff members, only 5 candidates belonging to the Christian Minority Community of Tamil Nadu got selected. Putting this statistics across, the learned counsel for the unselected candidates contended that instead of admitting a predominant number of students from Tamil Nadu and a sprinkling from outside the State, the Institution had admitted a predominant number of students from other States with only a sprinkling from Tamil Nadu.

45. The aforesaid contention, together with the statistics that stare at one's face, is prima facie, convincing and appealing. But if we analyse the issue more deeply, the cloud of suspicion will get cleared. Though Mr. Krishna Srinivas attempted to meet this point by contending that the Institution in question is an All India Institution and that it was established way back in the year 1942 even before the States reorganisation took place and that therefore, it cannot be equated to any other minority Institution of recent

origin, the same is not very convincing. But the real answer to the problem posed by the issue of "predominance and sprinkling", lies elsewhere.

46. Kerala Education Bill, 1957, In re. AIR 1958 SC 956, is one of the earliest cases in which the Supreme Court considered the scope and ambit of the right conferred by Article 30(1) of the Constitution. The law laid down therein, has held the field for 50 years now and the same can be seen from the observations of the Supreme Court in P.A.Inamdar's case. The area that appears to be Grey in this regard got demystified in paragraphs-97 to 100 of the judgment in P.A.Inamdar's case, as follows:-

"97. In Kerala Education Bill the scope and ambit of the right conferred by Article 30(1) came up for consideration. Article 30(1) does not require that minorities based on religion should establish educational Institutions for teaching religion only or that a linguistic minority should establish educational Institution for teaching its language only. The object underlying Article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational Institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are: (i) to enable such minority to conserve its religion and language, and (ii) to give a thorough, good, general education to children belonging to such minority. So long as the Institution retains its minority character by achieving and continuing to achieve the abovesaid two objectives, the Institution would remain a minority Institution."

"98. The learned Judges in Kerala Education Bill were posed with the issue projected by Article 29(2). What will happen if the Institution was receiving aid out of State funds? The apparent conflict was resolved by the Judges employing a beautiful expression. They said, Articles 29(2) and 30(1), read together, clearly contemplate a minority Institution with a "sprinkling of outsiders" admitted in it. By admitting a member of non-minority into the minority Institution, it does not shed its character and cease to be a minority Institution. The learned Judges went on to observe that such "sprinkling" would enable the distinct language, script and culture of a minority being propagated amongst non-members of a particular minority community and that would

indeed better serve the object of conserving the language, religion and culture of that minority."

"99. Chief Justice Hidayatullah, speaking for the Constitution Bench in State of Kerala vs. Very Rev. Mother Provincial has not used the expression "sprinkling" but has explained the reason why that was necessary. He said:

"It matters not if a single philanthropic individual with his own means, founds the Institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an Institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from the other minority communities or even from the majority community can take advantage of these Institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection." (SCC p.420, para 8)"

"100. Much of the controversy can be avoided if only the nature of the right conferred by Articles 29 and 30 is clearly understood. The nature and content of these articles stands more than clarified and reconciled inter se as also with other articles if only we understand that these two articles are intended to confer protection on minorities rather than a right as such. In st. Stephen's Their Lordships clearly held (vide para 28) that Article 30(1) is "a protective measure only" and further said (vide para 59) that Article 30(1) implied a certain "privilege". Articles 29 and 30 can be better understood and utilised if read as a protection and/or a privilege of minority rather than an abstract right."

47. From the above paragraphs of the judgment in Kerala Education Bill, quoted with approval in the latest decision viz., P.A.Inamdar's case, it is clear that in order to enable the Institution to enjoy protection under Article 30 of the Constitution, the Institution must satisfy the twin objects laid down therein viz., (a) that it tends to conserve its religion/language; and (b) that it seeks to give a thorough, good and general education to children belonging to such minority. The last sentence in paragraph-97 of the judgment of the Supreme Court in P.A.Inamdar's case, clinches the issue and it is reproduced at the cost of repetition, as follows:-

"So long as the Institution retains its minority character by achieving and continuing to achieve the abovesaid two objectives, the Institution would remain a minority Institution."

48. It is necessary to remember that what the Seven Judges Bench did in P.A.Inamdar's case, was only to settle some of the questions that remained unsettled even after the exercise undertaken by the Constitution Bench in Islamic Academy case in clarification of the decision of the Eleven Judges Bench in Pai Foundation (Para-4 of the judgment in P.A.Inamdar's case) . In Pai Foundation, the Eleven Judges Bench did not answer question Nos.6(a) and (b), but left it open to a regular Bench to answer the issue. It is useful to reproduce the questions 6 (a) and (b) as well as the answers thereto, under para-161 of the judgment in Pai Foundation case, as follows:-

"Q. 6.(a) Where can a minority Institution be operationally located? Where a religious or linguistic minority in State A establishes an educational Institution in the said State, can such educational Institution grant preferential admission/reservations and other benefits to members of the religious/linguistic group from other States where they are non-minorities?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q. 6. (b) Whether it would be correct to say that only the members of that minority residing in State A will be treated as the members of the minority vis-a-vis such Institution?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench."

49. It is relevant to point out that the question as to who would be regarded as a "minority" was taken up for consideration in T.M.A.Pai Foundation case, on the basis, that the 42nd Amendment to the Constitution, whereby education was included in Entry 25 of List III of 7th Schedule, changed the scenario. Therefore, de hors the ratio laid down in Kerala Education Bill case, the Eleven Judges Bench, took up the issue of the true scope and interpretation of Article 30(1) of the Constitution for consideration in Pai Foundation case. Dealing with the ratio laid down in Kerala Education Bill case, the Supreme Court held in para-77 of its judgment in Pai Foundation case, as follows:-

"77. In Kerala Education Bill, 1957 case, the question as to whether the minority community was to be determined on the basis of the entire population of India, or on the basis of the population of the State forming a part

of the Union was posed at SCR p.1047. It had been contended by the State of Kerala that for claiming the status of minority, the persons must numerically be a minority in the particular region in which the educational Institution was situated, and that the locality or ward or town where the Institution was to be situated had to be taken as the unit to determine the minority community. No final opinion on this question was expressed, but it was observed at SCR p.1050 that as the Kerala Education Bill "extends to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of that State".

50. Therefore, the Eleven Judges Bench in Pai Foundation case, took the view in para-79 of its judgment that with regard to a State Law, the unit to determine a religious or linguistic minority can only be the State. On the question whether this position underwent a change after the 42nd Amendment and whether the definition of minority would change, depending upon who was legislating, the Supreme Court held in para-81 of its judgment in Pai Foundation case, as follows:-

"The minority for the purpose of Article 30 cannot have different meanings depending upon who is legislating. Language being the basis for the establishment of different States for the purposes of Article 30, a "linguistic minority" will have to be determined in relation to the State in which the educational Institution is sought to be established. The position with regard to the religious minority is similar, since both religious and linguistic minorities have been put on a par in Article 30."

51. After discussing elaborately, the purport of the judgment in Kerala Education Bill case, with reference to the interplay of Articles 29(2) and 30(1) of the Constitution, the Eleven Judges Bench in Pai Foundation case, concluded in para-104 of the judgment that *"the opinion expressed therein (Kerala Education Bill case) does not really go counter to the ultimate view taken by us in regard to the interplay of Articles 30(1) and 29(2)"*.

52. Thus, a careful reading of the entire judgment of the Eleven Judges Bench in Pai Foundation case, shows that the *"twin objects test"* laid down in Kerala Education Bill case was approved by the larger Bench. This is found in no uncertain terms in para-183 of the judgment of the Eleven Judges Bench (which was actually that of Justice V.N.Khare in a separate but concurring view), in the following lines:-

<https://hcservices.ecourts.gov.in/hcservices/> "The test who are linguistic or religious minorities as settled in Kerala Education Bill, 1957 case, continues to hold good even after the

subject Education was transposed into Entry 25 List III of Seventh Schedule by the 42nd Amendment Act."

53. In a nutshell, the view taken by the Supreme Court in Kerala Education Bill case (AIR 1958 SC 956), that State shall be the unit, got approved in Pai Foundation case, and later clarified in Inamdar's case, as holding the field for nearly 50 years, both before and after the 42nd Amendment. Despite agreeing with the said view, Pai Foundation did not answer the specific question as to whether the members of that minority residing in State A alone would be treated as members of minority vis-a-vis such Institution. Therefore, the answer to this question has to be searched for only in Inamdar's case. Since the "twin objects test" laid down in Kerala Education Bill case was also quoted with approval in Inamdar's case, in para-97 of its judgment, extracted supra, the conclusion is inevitable that the "twin objects test" holds the field as on date and that it is the very foundation upon which question of what would be the unit for determining minority status "whether State or Nation", is sought to be built.

54. If we ignore the "twin objects test" laid down in Kerala Education Bill case (as extracted in para-97 of the judgment in Inamdar's case) and go only by the peripheral issue of "unit", certain illogical and unintended consequences would follow. For example, an Educational Institution established and maintained by Muslims in the State of Tamil Nadu, will lose its minority status, merely by admitting Muslim students from other States. Muslims are an All India Minority Community and hence to oust the students of that Community, merely on the basis of their domiciliary status, for admission to a minority Muslim Educational Institution in a particular State, would militate against the very concept of protection guaranteed under Article 30. It is in this context that the "twin objects test" laid down in Kerala Education Bill case which was quoted with approval in para-97 of Inamdar's case, that would come to our rescue for a proper understanding of their protection and not of their right. To say that a Christian Minority Institution established in Tamil Nadu would lose its minority status, by admitting Christian Minority students of other States even in which they are only a minority, would actually defeat the very purpose of grant of protection under the Constitution. As a matter of fact, Justice V.N.Khare in his separate but concurring judgment in Pai Foundation case, extracted the relevant passage from the debate in the Constituent Assembly in para-168 as follows:-

"168. Dr.B.R.Ambedkar while intervening in the debate in regard to amendment to Draft Article 23 which related to the rights of religious and linguistic minorities stated that

"the term 'minority' was used therein not in the technical sense of the word minority as we have been accustomed to use it for purposes of certain political safeguards, such as representation in the legislature, representation in the services and so on."

According to him, the word minority is used not merely to indicate the minority in the technical sense of the word, it is also used to cover minorities which are not minorities in the technical sense but which are nonetheless minorities in the cultural and linguistic sense. Dr.Ambedkar cited the following example which runs as under:

"For instance, for the purposes of this Article 23, if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities. Similarly, if a certain number of Maharashtrians went from Maharashtra and settled in Bengal, although they may not be minorities in technical true sense, they would be cultural and linguistic minorities in Bengal.

The article intends to give protection in the matter of culture, language and script not only to a minority technically, but also to a minority in the wider sense of the term as I have explained just now. That is the reason why we dropped the word minority because we felt that the word might be interpreted in the narrow sense of the term when the intention of this House, when it passed Article 18, was to use the word 'minority' in a much wider sense, so as to give cultural protection to those who were technically not minorities but minorities nonetheless."

55. Viewed from another angle, the very concept of taking State as the Unit for determining the minority status of an Institution, developed only with a view to widen the scope of the definition of the word "minority". In the words of Dr.B.R.Ambedkar extracted above, the use of the word "minority" is in a "wider sense" and not in a "technical sense". Therefore, if we hold that the Christian Minority students of a particular State cannot get admission in any Christian Minority Educational Institution of another State, even though Christians are a minority in both those States, we would only be shrinking "the wider sense" of the word "minority" to a mere "technical sense".

56. More over, the purpose of taking the 'State' as the unit for determining minority status, is not to create a wheel within a wheel, by creating one more classification on the basis of domiciliary status of the minority group. In other words, the object of taking the 'state' as the unit, is not to make 'Christians and Muslims living in all other States' as a majority vis-a-vis 'Christians and Muslims living in one State'. Such a demographic classification based upon geographic considerations, is not what the

Apex court intended to have as a bye-product of holding that State shall be the unit. Therefore in my considered view, the contention of the learned counsel for the unselected candidates that the petitioner Institution erred in admitting a large number of Christian Minority students of other States, is not tenable.

IV.ADMISSION OF CHRISTIAN STUDENTS FROM THE STATES WHERE THEY ARE A MAJORITY:

57. As seen from the Prospectus, the Institution reserved upto 10 seats (out of a total of 60 seats) for Christian candidates from socially and educationally Backward States. Clause 5 of the Prospectus, though extracted already, is again extracted for the purpose of easy reference, as follows:-

"5. Minority Candidates (upto 50)

a. Up to 10 seats will be reserved for Christian candidates from socially (health parameters) and educationally backward States who are domiciled in the state and have undergone three of the last four years of their secondary education in that state. The states, which come under this category, will be determined from time to time based on the health and development indices published by the Government of India. For this year's selection, the states shall be - Bihar, Chattisgarh, Jharkhand, MP, Orissa, UP and the North-eastern states. Candidates will be selected by merit."

58. The aforesaid Clause in the Prospectus has come under fire from the unselected candidates on the ground that Christians form a majority in two of the North Eastern States and that therefore, the admission granted in their favour was violative of the law laid down by the Apex Court.

59. It is true that two candidates have been selected from the State of Meghalaya, in which Christians are a majority. However, only one of those candidates got selected from out of the 10 seats reserved for socially and educationally Backward States, in terms of clause-5.a. of the Prospectus. The other candidate got selected under the quota reserved for Scheduled Castes/Scheduled Tribes from among the 10 seats reserved for Open All India Merit under Clause 4 of the Prospectus.

60. Thus, on facts, it is found that only one Christian student has been selected from a State where Christians are a majority. Therefore, this one seat could be considered only to be a "sprinkling", which has been permitted right from Kerala Education Bill case upto Inamdar's case. Moreover, I am unable to hold that the selection procedure is flawed, merely on account of the admission of one student from the State of Meghalaya, for the following reasons:-

<https://hcservices.ecourts.gov.in/hcservices/>

(a) As seen from Clause 5.a. of the Prospectus, the Institution allotted 10 seats for Open All India Merit and upto 50 seats for

Christian Minority. The total intake was only 60 seats. Out of the 50 seats allotted for Christian Minority, the Institution reserved upto 10 seats for Christian candidates hailing from socially and educationally Backward States. In order to ensure that this Clause is not misused, the Institution has provided two safeguards under Clause 5.a. of the Prospectus viz., (i) that the benefit would be available only to those who are domiciled in that State and had undergone three out of the last four years of their secondary education in that State; and (ii) that the States coming under this category, would be determined from time to time, based upon the health and development indices published by the Government of India. Therefore, it was not the choice of the Institution that the State of Meghalaya got included under this category, but it was on account of the said State being found to be backward in terms of the health and development indices published by the Government of India that the State of Meghalaya came under this category.

(b) The allotment of upto 10 seats for Christian students hailing from these Backward States, has been done with the avowed object of providing health care to remote areas and hence it is actually laudable. While considering the validity of reservation of 70% of the seats in the Post Graduate Medical Courses to their own students by the Delhi University, the Supreme Court held in Dr. Jagadish Saran and Others vs. Union of India (1980 (2) SCC 768), that "if a region is educationally backward or woefully deficient in medical services, there occurs serious educational and health service disparity for that human region which must be redressed by an equality-and-service minded welfare State". In para-20 of the same judgment, the Supreme Court also held that if the State finds that only students from the backward regions, when given medical graduation, will care to serve in that area, drawn towards it by a sense of belonging, and those from outside will, on graduation, leave for the Cities or their own regions, it may evolve a policy of preference.

(c) Again in Dr. Pradeep Jain and Others vs. Union of India and Others (1984 (3) SCC 654), the Supreme Court held in para-18 that "preferential treatment based on residence in a backward region can play a significant role in reducing uneven levels of development" and that it would be calculated to redress the existing imbalance between different regions in the State".

It is well known that minorities, especially Christians, have come to adopt the spread of Education and Health care as the essential tools in their hands, for protecting, propagating and preserving their identity as a religious minority group. This satisfies the test of 'twin objects' laid down by the Supreme court, namely (a) that it tends to conserve its religion; and (b) that it seeks to give a thorough, good and general education to children belonging to such minority. Therefore, I am of the considered view that the allotment of upto 10 seats under Clause 5.a. of the Prospectus for socially and educationally Backward States, did not cut through the root of the Institution as a minority Institution, merely because one student from the State of Meghalaya, where Christians are a majority, got selected for admission to the Course.

V. RESERVATION OF SIX SEATS FOR CHILDREN OF THE STAFF AND MEMBERS OF THE INSTITUTION:

61. The reservation upto six seats for the children of eligible members of the staff of the Institution, made under Clause 6 of the Prospectus, has been disapproved by the Permanent Committee by its order dated 10.6.2006 and the Institution has filed a writ petition challenging that portion of the order. The attempt made by the Institution to bring this reservation under the category of "Institutional Preference" has been repelled by the Permanent Committee.

62. The unselected candidates have also assailed the said reservation on the ground that it does not have the sanction of law. Therefore, it is necessary to look into the nature of such a reservation, to test its validity.

63. Clause 6 of the Prospectus reads as follows:-

"6. There is no reservation for NRI's; they will be considered under All India Open Merit. However, upto 6 seats will be reserved for admission of children of eligible members of staff of CMC Vellore (Confirmed staff with 10 years of continuous service or retired or died in service after 10 years of continuous service). These seats will be available on merit for children of both minority and non-minority staff."

64. From a reading of Clause 6 above, it is seen that the Institution has chosen such a reservation, in lieu of the quota for NRI's, now permitted lawfully. The Institution itself projected this reservation as lawfully made in lieu of the quota for NRI's and also as an "Institutional Preference". Therefore, it must be seen as to whether such a classification is valid in the eye of law.

65. Dealing with the issue of "Institutional Preference" in Dr. Pradeep Jain and Others vs. Union of India and Others (1984 (3) SCC 654), the Supreme Court held that "having regard to broader considerations of equality of opportunity and institutional continuity in education, which has its own importance and value, it must be directed that a maximum limit of 50% of seats may in the

present circumstances be reserved on the basis of Institutional Preference." In para-22 of the said judgment, the Supreme Court clarified, the sense in which the term "Institutional Preference" was used, in the following words:-

"Institutional Preference in the sense that a student who has passed M.B.B.S., Course from a Medical College or a University may be given preference for admission to the Post Graduate Course in the same Medical College or University".

66. Even in *Dr. Jagadish Saran and Others vs. Union of India* (1980 (2) SCC 768), the Supreme Court approved of Institutional Preference, on the basis that the desire of the students for Institutional continuity in education and its value, provided the justification for such preference. However, the Supreme Court cautioned in para-49 of the judgment that Institution wise reservation is constitutionally circumscribed and may become ultra vires if recklessly resorted to. But even in the said judgment, the term "Institutional Preference" was understood in the context of students of the same Institution seeking a quota for themselves for pursuing higher education in the same Institution.

67. The validity of Institutional Preference was again tested in *AIIMS STUDENTS UNION vs. AIIMS AND OTHERS* (2002 (1) SCC 428). After holding that "Institutional Reservation" is ultra vires the Constitution, the Supreme Court held that "Institutional Preference" can be permitted, on the grounds of convenience, suitability and familiarity with an educational environment.

68. Even in *Magan Mehrotra and Others vs. Union of India and Others* (2003 (11) SCC 186), the Supreme Court approved some kind of a preferential treatment accorded to students of the same Institution for pursuing higher studies, though residential preference was denounced.

69. The question as to whether reservation by way of Institutional preference comes within the suspected classification, fell for consideration, again before a Five Judge Bench of the Supreme Court in *Saurabh Chaudri and Others vs. Union of India* (2003 (11) SCC 146). In paragraph 33, the Supreme Court framed the said question in the following words:-

"The second question that arises for our consideration is, whether reservation by way of Institutional preference comes within the suspected classification warranting strict scrutiny test."

70. After going through the case law on the point, this question was answered by the Supreme Court in paragraphs-64, 69 and 70 as follows:-

"64. The sole question, therefore, is as to whether reservation by way of Institutional preference is ultra vires Article 14 of the Constitution of India. We think not. Article 14,

it will bear repetition to state, forbids class legislation but does not forbid reasonable classification, which means: (1) must be based on reasonable and intelligible differentia; and (2) such differentia must be on rational basis."

"69. As noticed hereinbefore, in D.N.Chanchala case, M.R.Mini case and Jagadish Saran case Institutional preference has been preferred. It has been reiterated in the law laid down by way of a scheme evolved in Dr.Pradeep Jain and reiterated in Magan Mehrotra."

"70. We, therefore, do not find any reason to depart from the ratio laid down by this Court in Dr.Pradeep Jain. The logical corollary of our finding is that reservation by way of Institutional preference must be held to be not offending Article 14 of the Constitution of India."

71. Thus it is seen that right from the judgment in Dr. Jagadish Saran case of the year 1980, upto the decision in Saurabh Choudri case of the year 2003, the Supreme Court has consistently approved of preferential treatment to students of the same University, for admission to higher/Post Graduate Courses, calling it as "Institutional Preference", subject however to a ceiling limit on the percentage of such preference. Therefore, the petitioner-Institution contended that the reservation upto 6 seats for the children of the eligible staff members of the Institution, forming only 10 % of the total seats, fell within the test of reasonable classification.

72. However, as contended by Mr.R.Muthukumarasamy, learned Senior Counsel, the term "Institutional Preference" has always been understood and appreciated in all the aforesaid decisions of the Supreme Court, as a preference given to students who had undergone the Under Graduate Courses in the same University or Institution and not in the context of a reservation for the children of staff members.

73. But it does not mean that the preference made by the Institution in this case, would not come within the meaning of the term "Institutional Preference". It so happened that in all cases, right from Dr.Jagadish Saran case upto Saurabh Chaudri case, the Supreme Court was concerned with the preferential treatment sought to be given to the alumnus of the same College/University. The question as to whether the wards of the staff members of those Colleges/Universities, would be entitled to preferential treatment or not, did not fall for consideration in those cases. Therefore, the validity of such a preference can still be tested with reference to Articles 14 and 15 of the Constitution, on the same analogy and justification on which, the Apex Court upheld the validity of "Institutional Preference".

74. As a matter of fact, the Supreme Court tested the validity of "Institutional Preference", in para-64 of the judgment in Saurabh Chaudri case (extracted supra in para-70) on the twin tests of "(i) whether it was based on reasonable and intelligible differentia and (ii) whether such differentia had a rational basis".

75. If we apply the same twin tests, it can be found that the Institution in this case satisfies both the tests. At the outset, the Institution has not commercialised education. It does not receive state aid. It is an unaided, non capitation fee, minority Institution. There is no dispute about the fact that the fee structure in the petitioner-Institution is actually lower than the fee structure of even Government Medical Colleges. The Permanent Committee, in its order dated 10.6.2006 has recorded that "The Fee fixed by the Institution also seems to be non-exploitative and to a certain extent, much less than what the Government has fixed."

76. More importantly, candidates who graduate from the petitioner-Institution are sent to rural areas where there are no adequate medical facilities. In the penultimate paragraph of its order dated 10.6.2006, the Permanent Committee recorded the following:-

"Apart from all the above facts, it is also evident that candidates who pass the graduation course will have to serve at places where more medical facilities are needed. They are asked to serve in rural areas. In case the candidate fails to do so, he has to face certain serious consequence. The readiness of the candidate to serve the needy is a matter which is taken into consideration by the institution while considering merit. What the institution does is a team or a missionary work."

77. When an Institution has taken upon itself, the responsibility of producing not merely medical graduates of academic excellence but of producing Doctors with a concern for social values and a consideration for human values, the preferential treatment sought to be accorded to its own members of the staff, cannot be held to be subversive of Article 14 of the Constitution.

78. After all, a prudent businessman ploughs a part of the profits earned by him, back into the business, in order to strengthen the asset base. On similar lines, the petitioner-Institution has adopted the practice of according preferential treatment to the children of staff members, who constitute the asset base of the Institution, in terms of the values for which it stands. This is done in the hope, which has also not been belied in the past, that these children, after graduation, join the Institution and contribute to its growth and sustenance.

79. The Institution filed a representation before the Permanent Committee pointing out the special features of the Institution, which have been extracted in the order of the Permanent Committee as follows:-

"1. A commitment to the care of the under privileged (value of free and subsidized care for this year Rs.36 crores) women and children following the footsteps of the founder Dr.Ida Sophia Scudder.

2. The 'Both and Philosophy' raising funds from patients who can afford to pay for poor patients and to subsidize education.

3. The amount of subsidy for education for this year is Rs.26 crores. The fee charged for the MBBS Course is Rs.3000/- per month, lower than the fee charged in the State Government Colleges.

4. A modified Gurukul system of education with compulsory residence in hostels and assigning students as "Foster children" to faculty Families.

5. Excellence and innovation in Education, was the first recognised community based medical college in India and one of the first to introduce the "Problem based learning" strategy in Medical Education.

6. The community out reach programme covers a population of 4,00,000.

7. CMC has collaboration with 14 Universities outside India, gets exchange students from Ethiopia, Europe, USA, Canada and Australia and run specialized training programmes for Health professionals from SAARC countries and for some European governments for their professionals to work in Africa.

8. Always ranked in the top ten Medical Colleges in the country usually first or second.

9. The Best College of Nursing in India (offering Certificate, B.Sc., M.Sc., and Ph.D. Programmes.

10. High commitment to social justice with the ratio of highest salary to lowest salary being 7:1 was awarded the Best Employers award by the Central Ministry of Labour and the Board of Trustees of the Employees Provident Fund in 2003.

11. Given Five Star rating by the National Assessment Accreditation Council.

12. One of the very few Non-Profit Charitable societies given the highest financial rating by ICRA.

13. A long tradition of high quality

research in Health problems recognized by the award of 5 National Centres of Advanced Medical Research during the last 20 years by the Indian Council of Medical Research.

14. Is the recognised pioneer nationally and internationally in the care of patients with leprosy, HIV/AIDS and in rehabilitation.

15. Has been competitively awarded the national Stem Cell Research facility by the Department of Biotechnology (A Rs.18 crores project) which was inaugurated by the President of India in December 2005.

16. The first College in the country to admit students on an All India Basis with an Entrance Examination and interview (from 1948) which has so far been never challenged by students in a Court of Law. The system evolved by CMC has been subsequently adopted by institutions such as AFMC and AIIMS."

80. Admittedly the Institution is a society registered under the Societies Registration Act and it does not belong to a private individual or to a family of persons. The Institution has been able to achieve the standards and excellence detailed above, only as a result of the contribution made by its own committed staff over several decades and the same cannot obviously be measured in monetary terms. By providing preferential treatment to the children of such committed staff, the Institution seeks to sustain its commitment to social justice and to value based (as opposed to money based) health care.

81. The above preferential treatment satisfies the twin tests under Article 14, in view of the fact that even these children of staff members are made to participate in the same entrance examination, individual and group tasks and interview. Just like the students selected under the other categories, the children of the staff members would also get qualified for admission only if they secure a 'C+' grade in the ultimate tally. Thus, merit is not sacrificed on account of this preferential treatment. On the other hand, it is admitted that only five students got admitted under this preferential category this year and all of them secured the grades of 'B+', 'B' and 'C+'. These candidates appear to have secured reasonably high ranks in the main written entrance examination also and hence the preference given to them was not at the cost of merit. Moreover, it is stated in the counter-affidavit filed by the Institution to the additional affidavit of the petitioner in W.P.No.32552 of 2006 that even children of Class-III and Class-IV employees have been selected under this preferential category in the past.

82. As seen from Clause 6 of the Prospectus, this institutional preference, has been made by the Institution in lieu of NRI quota. Though the quota for NRIs itself, did not emanate from a reservation of classification made under any of the provisions of the Constitution, the Supreme Court approved of the same in P.A.Inamdar's case. In para-131 of its judgment in the said case,

the Supreme Court held as follows:-

"131. Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ("NRI" for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to a certain number of students under such quota by charging a higher amount of fee. In fact, the term "NRI" in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, that neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen their level of education and also to enlarge their educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with the Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilised bona fide by NRIs only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilised for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidised payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in Islamic Academy to regulate."

83. The object of permitting Institutions to allot 15% of the seats to NRIs, as seen from the judgment in Inamdar's case, is to ensure that the money brought by such students strengthens the level of education and enlarges the educational activities of the Institutions. The amount so collected, would go to the benefit of economically weaker sections of the society. Thus, the object of reserving upto 15% of the seats for NRIs was considered to be laudable by the Supreme Court on account of the financial strength that it provides to the Institution. It is only on the same analogy that the petitioner-Institution has created a preferential category. If NRI seats can strengthen the coffers and physical parameters of an Institution, the preference given to children of the staff members can certainly strengthen the value base and moral parameters for which an Institution like the petitioner stands. Therefore, I find nothing wrong in the petitioner-Institution attempting to strengthen its value based manpower rather than strengthening market based money power, by creating such a preferential category.

84. Though, the Permanent Committee rejected the allotment of six seats by the Institution, as one which would not fall under the category of Institutional Preference, the Permanent Committee did not consider it with reference to the NRI quota. As stated already, this preferential category has not been created to give a go-by to merit. Therefore, the allotment of six seats for the children of staff members in my considered view, is actually laudable, at a time when money power has come to hold a sway over educational Institutions. This is more so especially when even Class III and Class IV employees stand to benefit by such preference.

85. In view of my findings on issues I to IV, I see no reason to interfere with the selection made by the petitioner-Institution. Consequently, W.P.Nos.32552 and 36500 of 2006 are dismissed. No costs.

86. In view of my finding in issue No.V, the writ petition filed by the Institution in W.P.No.18384 of 2006 is allowed and that portion of the order of the Permanent Committee dated 10.6.2006 invalidating the allotment of six seats for children of the members

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of the staff of the Institution, is set aside. No costs. Consequently, connected miscellaneous petitions are closed. Svn.

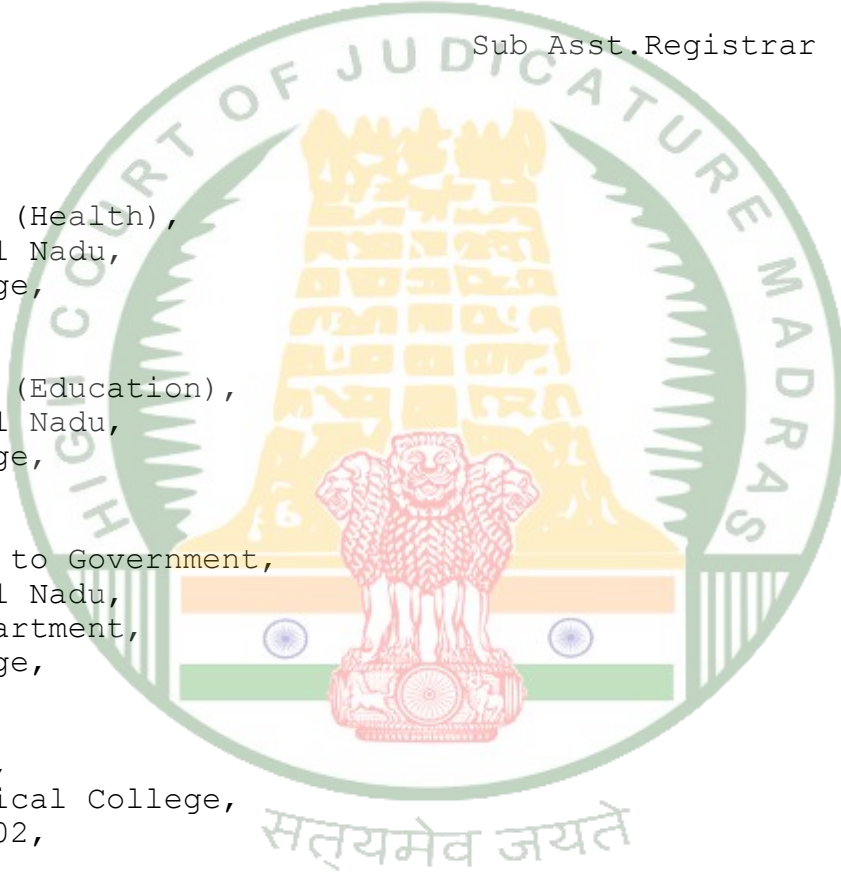
Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

- 1.The Secretary (Health),
State of Tamil Nadu,
Fort St. George,
Chennai
- 2.The Secretary (Education),
State of Tamil Nadu,
Fort St. George,
Chennai
- 3.The Secretary to Government,
State of Tamil Nadu,
Education Department,
Fort St. George,
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- 4.The Registrar,
Christian Medical College,
Vellore-632 002,
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- 5.The Registrar,
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6. The Permanent Committee for the
Conduct of Common Entrance
Examination in Private Colleges
NCB-7A, Greenways Road,
Chennai

+2ccs to the Government Pleader sr no. 9063, 9062
+3ccs to M/s. S. Ramasubramaniam Associates, sr no. 9163
+ one cc to Ravichandrababu, Advocate sr no. 9152
+one cc to Mr. G. Gladys Daniel, Advocate sr no. 8792

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WP Nos.32552,36500
and 18384/2006



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